IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CIVIL WRIT PETITION NO.5378/02

Deepak Kant **Versus** Ganpat & Ors.

DATE OF ORDER :: 16/04/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Devendra Kumar Bhardwaj, for petitioner
Mr. Vigyan Shah for Mr. Ashok Mehta, for respondents

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Instant petition has been filed by petitioner assailing the order dated 11th July, 2002 whereby his application filed for restoration of claim application was dismissed by learned Tribunal.

Facts, which almost not in dispute, are that the alleged accident took place on 20th July, 1996 – against which claim application was filed by him in November, 1996. The written statement was filed by the Insurance Company on 5th November, 1998 and thereafter, issues were framed, but anyhow opportunity was afforded to the claimant, but for good reason, he has not turned up and his application was dismissed in default on 4th May, 2000. Restoration application was filed on 8th May, 2000, but it appears that date fixed was 13th September, 2001, but anyhow counsel for claimant was under impression that the date fixed was 21st September, 2001 and on 21st September, 2001, when it came to knowledge that his restoration

application has been dismissed on the same day. Application was filed for recalling the order which has been dismissed by the learned Tribunal under the order impugned.

It is true that sufficient time was available for the claimant to produce evidence in support of their claim application but the same was dismissed in May, 2000. It appears that so far as restoration application is concerned, the same was filed within four days and the explanation which the claimant has furnished about the date of 21st September, 2001, it appears to be reasonable and which has not been properly appreciated by learned Tribunal. Moreso, when application was filed by him on 21st September, 2001 itself shows its bonafide. Even otherwise, claim application ordinarily has to be decided on merits, which is the basic object of the Act also.

Counsel for respondents has raised objection that if compensation is finally computed by the learned Tribunal, the Company has to be burdened over payment of interest for the said period for which they cannot be saddled with any cost. Submission made appears to be reasonable certainly when claim application was dismissed and restoration was also dismissed by the learned Tribunal atleast the claimant cannot be made entitled for interest for the intervening period.

Consequently, the writ petition stands allowed and order of the Tribunal dated 11th July, 2002 is hereby quashed and set aside. Parties are directed to appear before the learned Tribunal on 14th May, 2007. However, it is made clear that if Tribunal comes to a conclusion after examining on merits that claimant is entitled for compensation, it is further made clear that he will not be entitled for interest from the date of dismissal i.e 04/05/2000 till passing of the present order. Copy of this order be sent to the concerned Tribunal.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.